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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,171	12/20/2000	Bruno Johannes Ehmsperger	CM2128FQ/JH	8797

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08/04/2003

The Procter & Gamble Company
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EXAMINER

VO, HAI

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/720,171	EHRNSPERGER ET AL.	
	Examiner	Art Unit	
	Hai Vo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

P riod for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12,14-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12,14-17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>0725</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: |

1. Claims 13 and 18 have been canceled in the amendment received on 07/11/2003.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-12, 14-17 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With regard to claims 1 and 16, the membrane itself being impermeable to gas and liquid have not been found supported in Applicants' specification. The examiner recognizes that the membrane coated with a soluble layer of polyvinyl alcohol instead being impermeable to gas and liquid is supported in Applicants' specification.

Further, "the membrane is permeable to both gas and liquid after activation" in claim 15; "a gas reservoir" and "the membrane spanning the inlet so that gas passing through the inlet passes through the membrane" in claim 16 are not found supported in Applicant's specification.

4. Claims 1-12, 14-17 and 19 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while it is enabling for a device wherein a soluble layer

comprises polyvinyl alcohol, it does not reasonably provide enablement for the claimed material wherein the nature of the soluble layer is not specified. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

Claim Objections

5. Claims 4 and 9-11 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim can not depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 4, 9-11 have not been further treated on the merits.
6. Claim 5 is objected to because of the following informalities: in US Patent practice, the phrase "characterised in that" is preferably replaced by --comprising--- or --wherein--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
8. Claims 1, 2, 3, 5, 12, 14, 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talonn et al (US 4,417,574) in view of Blackmer et al (US 4,722,334) as evidenced by Rotman (US 4,734,372). Talonn teaches a liquid

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drain 30 for a patient breathing system in which gas is supplied to patient comprising a liquid reservoir 64, an inlet 68, a liquid permeable, gas impermeable barrier means 86 including a first layer 97 of filter paper which is gas permeable when dry and liquid permeable and gas impermeable when wetted by a liquid, and a water soluble second layer 98 coated on the first layer which is substantially gas impermeable to prevent gas to flow through the barrier when the second layer is dry but is dissolvable upon contact with the liquid (figures 2 and 3). Talonn teaches the barrier is hermetically sealed to the reservoir so that liquid passing through the inlet must pass across the membrane (column 3, line 64 et seq.). Talonn does not specifically disclose the pore size of the filter paper 97. Rotman teaches a filter paper of cellulose fibers typically has a pore size of 20 microns on the average (column 6, lines 58-60). Talonn is silent as to the reservoir at least partially occupied by a porous bulk material. Blackmer teaches an apparatus for pulmonary and cardiovascular conditioning of racehorses comprising a stream of gas, a water container, and a porous membrane disposed within the container adapted to allow the liquid droplets to contact the porous membrane to permit a vapor to defuse therethrough (claim 1, figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to dispose a porous membrane within the liquid reservoir of Talonn motivated to allow the liquid droplets to contact the porous membrane to permit a vapor to defuse therethrough so as to enhance the

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performance of the liquid drain, which is important to the invention of Talonn,
thus further suggesting the modification.

Terminal Disclaimer

9. The terminal disclaimer filed on 07/10/2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,500,337 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

10. The double patenting rejections have been overcome by the terminal disclaimer.
11. The art rejections over EP'830 and Sutherland have been overcome by the present amendment and response.
12. Applicant's arguments with respect to claims 1-12, 14-17, and 19 have been considered but are moot in view of the new ground(s) of rejection.

WITHDRAWAL OF FINALITY

13. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Tue-Fri, 8:30-6:00 and on alternating Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700